

EXHIBIT V

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4 JAMES JIRAK and ROBERT)
5 PEDERSEN,)
6 Plaintiffs,)
7 vs.) No. 07 C 3626
8 ABBOTT LABORATORIES, INC.,)
9 Defendants.)

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11 The deposition of JOE SERIO, JR., called
12 for examination, taken pursuant to the Federal Rules
13 of Civil Procedure of the United States District
14 Courts pertaining to the taking of depositions, taken
15 before Lynn A. McCauley, CSR No. 84-003268, RPR, a
16 Certified Shorthand Reporter of the State of
17 Illinois, at 77 West Wacker Drive, Suite 3500,
18 Chicago, Illinois, on August 27, 2009 at 9:59 a.m.

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1 PRESENT:

2 JOSEPH & HERZFELD, LLP, by
3 MR. MICHAEL DI CHIARA
4 757 Third Avenue, 25th Floor
5 New York, New York 10017
6 212-688-5640
7 md@jhlhp.com
8 Appeared on behalf of Plaintiffs;

9 JONES DAY, by
10 MS. AMANDA M. OSE
11 555 California Street, 26th Floor
12 San Francisco, California 94104
13 415-626-3939
14 aose@jonesday.com
15 Appeared on behalf of Defendant;

16 and

17 JONES DAY, by
18 MR. BRENT D. KNIGHT
19 77 West Wacker Drive, 35th Floor
20 Chicago, Illinois 60601
21 312-782-3939
22 bknight@jonesday.com
23 Appeared on behalf of Defendant.

24

1 done MBA classes at DePaul.

2 Q. DePaul in Chicago?

3 A. Correct.

4 Q. When is the last time you took a class at
5 DePaul?

6 A. Oh, probably 10 years ago.

7 Q. Okay. Do you have any professional
8 licenses?

9 A. No.

10 Q. You're not a CPA or anything like that?

11 A. No.

12 Q. Do you have any professional
13 certificates?

14 A. No.

15 Q. I think I know the answer to this, but I
16 have to ask you.

17 Have you ever been convicted of a
18 felony in the past 10 years?

19 A. Nope.

20 Q. Of a misdemeanor in the past five?

21 A. Nope.

22 Q. All right. What is your current position
23 with Abbott?

24 A. I am a Senior Manager in the Managed Care

1 Contracting area.

2 Q. And what are your duties and
3 responsibilities in that position?

4 A. I work in concert with my field rep
5 counterparts to negotiate favorable formulary
6 position for our pharmaceutical products.

7 Q. And when you say you work with your field
8 rep counterparts, who are you referring to?

9 A. We have both regional and national
10 managed care executives that are basically our sales
11 force that call on private insurers.

12 Q. And your field reps, they're different
13 than the pharmaceutical reps that call on physicians;
14 correct?

15 A. Correct.

16 Q. And how long have you been in this
17 position?

18 A. Since March of '06.

19 Q. Now, you mentioned that there are
20 regional and district managed care sales reps?

21 A. Regional and national.

22 Q. Are there any lower-level salespeople in
23 the managed care group?

24 A. Not beyond those two groups. There are

1 competitive bid depending on a threat -- a
2 competitive situation.

3 Q. Now, is your role to assist in getting
4 Abbott products on formularies for managed care
5 organizations for which Abbott is not on formulary?
6 Is that one of your job responsibilities?

7 A. Yes.

8 Q. Is another one of your job
9 responsibilities to improve Abbott's formulary
10 position with some of these managed care groups?

11 A. Yes.

12 Q. Now, why would Abbott want to be on a
13 managed care group's formulary?

14 A. Because it provides a better or lower
15 out-of-pocket cost to patients which would in turn
16 mean that they're more likely to fill their
17 prescription and the volume of prescriptions we would
18 get overall would increase.

19 Q. And why would Abbott want to improve
20 their formulary position with a managed care
21 organization?

22 A. So that our reps can detail docs knowing
23 that there's not any kind of formulary restriction
24 that would have to be overcome at the point of sale

1 for the patient.

2 Q. And with the idea being also that that
3 would lead to the increase of more prescriptions as
4 being written for Abbott products?

5 A. Correct.

6 Q. And more prescriptions being filled for
7 Abbott products?

8 A. Yes.

9 Q. And that means more money for Abbott;
10 right?

11 A. Yes.

12 Q. Okay. If you look at Exhibit 1 in front
13 of you, sir, I'll ask you to just take a minute to
14 look at it. And my question is have you seen this
15 document before?

16 A. No.

17 Q. Okay.

18 A. Or I may have seen pieces of this in a
19 different format if this is the topics that I'm
20 looking at. It didn't look like this, what I'm
21 looking at.

22 Q. Okay.

23 A. Yes, I've seen the pieces, the 20 -- I
24 believe it's 21, 22, 23.

1 contracting organization, and their field
2 counterparts on the pharmacy side would be the
3 national trade execs.

4 Q. So you said there are very few contracts
5 with actual pharmacies?

6 A. Correct. Pharmacies primarily acquire
7 product from the wholesalers.

8 Q. Okay. Now, who works on the contracts
9 with wholesalers?

10 A. That would be the demand planning group
11 which used to be part of my group. Contracting it
12 has since moved recently to the part of the sales
13 forecasting group where I used to work.

14 Q. So the demand pharmacy group, is that
15 considered part of Abbott sales force if you know?

16 A. The demand planning group is not, no.
17 That's part of the finance organization.

18 Q. And those people employed in that group,
19 they are the ones who negotiate contracts with
20 wholesalers?

21 A. They along with their field counterparts,
22 again the national trade execs that represent Abbott
23 with those organizations.

24 Q. Okay. And are the national trade execs,

1 are they part of the -- considered part of the sales
2 force at Abbott?

3 A. Yes.

4 Q. They are considered part of the sales
5 force?

6 A. Yes.

7 Q. How many trade execs are there?

8 A. I don't know the exact number, eight or
9 10 approximately.

10 Q. Who supervises the trade execs?

11 A. I believe Ken Medics who is director of
12 trade relations.

13 Q. Now, the demand planning group and the
14 trade execs, do they negotiate prices with
15 wholesalers?

16 A. They do -- every three years they
17 negotiate contracts.

18 Q. Any other job title at Abbott that you
19 know of that is involved in the contract negotiations
20 with wholesalers?

21 A. No.

22 Q. Do you know if the sales force -- and
23 what I mean by sales force, by pharmaceutical reps,
24 that have any involvement in the contract

1 actually call on wholesalers and detail wholesalers
2 on Abbott products?

3 A. I do not believe any field reps that call
4 on physician base for example would be calling on any
5 wholesalers.

6 Q. And is it the trade group that has
7 responsibility to -- of entering into contracts with
8 wholesalers?

9 A. Correct.

10 Q. And is the trade group, are they
11 responsible for actually collecting money, or is that
12 another department at Abbott?

13 A. The actual collection of money would go
14 through accounts payable, accounts receivable, those
15 types of things which is a corporate function, but
16 the rates and all that would be negotiated by the
17 trade group and the demand planning organization.

18 Q. Okay. Again, I just want to direct your
19 attention to Paragraph 33, sir.

20 Can you describe for me the
21 distribution process for Abbott's pharmaceutical
22 products and how they get to the actual enduser?

23 A. So I just want to make sure I understand
24 the point.

1 prescription demand.

2 Q. What about the -- you know, in your
3 position I'm sure you've come across this information
4 as far as what impact an enhanced formulary position
5 a managed care provider has on the demand for Abbott
6 product?

7 A. Meaning generally does having a preferred
8 formulary position result in better share or demand
9 versus not having -- or having a non-preferred
10 position, yes. Absolutely that's true.

11 Q. Have there been studies that have been
12 done to show the impact an enhanced formulary
13 position has on the demand for Abbott products?

14 A. I don't know if there are studies that
15 are done, but you can fairly easily look at certain
16 products that aren't preferred on formulary and
17 compare their performance against products that are
18 on formulary and see that there is a -- potentially a
19 delta in shared performance.

20 Q. Can you tell me in your current job what
21 products you have been successful in recently in
22 either getting on formulary or getting an enhanced
23 formulary position?

24 A. Any of -- any of the ones that we

1 mentioned.

2 Trilipix has been added to several
3 formularies this year. It was just launched in
4 December, so it's been a focus in terms of trying to
5 get formulary access for the product.

6 Zemplar, we've had several formulary
7 enhancements going from nonpreferred to preferred.

8 Humira as well.

9 Q. Let's talk about Zemplar for a second.

10 How long has Abbott had Zemplar in
11 the market if you know?

12 A. I don't know exactly. I would say a few
13 years as a tablet formulation which is what I
14 support.

15 Q. Okay. And you said recently it got
16 enhanced formulary position. On which managed care
17 organization?

18 A. I don't remember off the top of my head.
19 I believe CIGNA was one. I don't remember all of
20 them off the top of my head.

21 Q. Now, do you have the -- in your position
22 do you have access to information concerning the
23 number of prescriptions for Zemplar prior to it
24 getting this favorable formulary position or enhanced

1 formulary position and statistics post-enhanced

2 formulary position?

3 A. For products that are moved from a
4 nonpreferred to a preferred formulary we have at a
5 macro plan level data that we use to analyze whether
6 or not we do the contract when it's signed, and then
7 we have the data after to analyze the performance of
8 that contract after it's executed.

9 Q. Okay. Now, speaking just in general
10 terms, in your experience in your current position,
11 have -- did the demand for Abbott products increase
12 when they've been placed on an enhanced formulary
13 position?

14 A. Yes.

15 Q. In your experience has there ever been a
16 product that obtained an enhanced formulary position
17 where the demand went down?

18 A. No.

19 Q. And can you -- is there any way to
20 quantify, you know, how much demand increases after a
21 product gets an enhanced formulary position?

22 A. It depends on a number of factors, what
23 the position was prior to the contract, a number of
24 therapeutic alternatives, effectiveness of both the